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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,500	01/16/2004	Jay P. Penn	69,545-999-3	7665
23879	7590	09/19/2007		
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			EXAMINER QUINN, COLLEEN M	
			ART UNIT 3634	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/759,500	PENN ET AL.	
	Examiner	Art Unit	
	Colleen M. Quinn	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Non-final Office action is in response to amendments filed August 24th, 2007, in which claim 1 was cancelled and claims 2, 3, 7, 9, 14, 20, and 43 were amended. The finality of the previous Office action of April 10th, 2007 has been withdrawn and the amendments of August 24th, 2007 have been entered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Currently, the drawings do not teach or suggest a "braided or webbing material" for the lift tethers as claimed in claim 14. Therefore, the drawings must be amended to show a braided or webbing feature on the lift tethers or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 4, 6, 7, 9-11, 15-18, 20 and 21 are objected to because of the following informalities: the phrase "said platform being selectively movable by operation of said drive mechanism within in a vertical dimension between raised and lowered positions;" is awkward and unclear. The applicant might consider deleting "within" and changing "dimension" to --direction-- for a less awkward description of the platform operation. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 2-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 4, 6, 7, 9, 10, 11, 15, 16, 17, 18, 20 and 21 all claim "a platform coupled to each lift tether" suggesting there is more than one platform, and that each lift tether is connected to its own platform. Applicant might consider phrasing such as --the hanging ends of the lift tethers cooperating to suspend

a single platform-- or similar wording that would more clearly define the applicant's invention.

Regarding claims 42 and 43, the applicant claims the frame to have "adjustable dimensions" suggesting the walls of the frame are either telescopic or immediately adjustable, which is not the case. If the applicant is trying to claim that the frame is capable of being constructed in any appropriate size or scale, than it is suggested the applicant clearly claim it that way to avoid further indefinite issues.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 16, 21-24 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (US 4,781,510). Smith et al. disclose a platform lift apparatus (figure 1) comprising a frame (18,26 and unnumbered covers over the pulleys and lift drums) having internal and external mounting surfaces; a drive mechanism substantially disposed within said frame and coupled to said internal mounting surfaces, said drive mechanism including a plurality of rotatable, parallel shafts (22, 24; note shaft 24 is mislabeled as 21 in figures) with each shaft further including at least one grooved lift drum (30, 34) having an associated lift tether (40, 44) at least partially wound thereon and having an end hanging therefrom (col 2, lines 59-63); and a platform (20) coupled

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to each said lift tether end and being thereby suspended from said frame, said platform being selectively movable by operation of said drive mechanism in a vertical direction between raised and lowered positions (col 2. lines 51-65).

Regarding claim 4, each one of the shafts further comprise at least one drive pulley (col. 3, lines 1-3) and a drive belt (46) coupled in between the pulleys, wherein the drive shafts are driven to rotation by operation of the drive mechanism.

Regarding claim 16, the drive mechanism further comprises an idler lift drum (28) operatively coupled (via 46) to a drive pulley (32) of another one of the shafts to communicate rotational motion between the shafts.

Regarding claims 21-24 and 35 Smith et al. disclose each rotational shaft to have at least one lift drum and at least one pulley (figure 1 and col 3, lines 1-3), wherein the pulleys of each shaft are coupled by a continuous belt (46) to permit simultaneous rotation of the first and second shafts in a like direction, the like direction being that both pulleys rotate outwardly; wherein the drive mechanism further comprises an electric motor (50) coupled to the shafts (figure 1).

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Swift (US 1,164,143). Swift discloses a platform lift apparatus (figure 8) comprising a frame (50) having internal and external mounting surfaces; a drive mechanism (figure 9) substantially disposed within said frame and coupled to said internal mounting surfaces (figure 9), said drive mechanism including a plurality of rotatable, parallel shafts (61; figure 9) with each shaft further including at least one lift drum (recessed winding areas

of 61) having an associated lift tether (59) at least partially wound thereon and having an end hanging therefrom (figure 8); and a platform (53) coupled to each said lift tether end and being thereby suspended from said frame, said platform being selectively movable by operation of said drive mechanism in a vertical direction between raised and lowered positions; wherein said drive mechanism further comprises at least one extension idler (60, 60' 60") in association with said at least one lift drum, said at least one extension idler shifting a horizontal position of said lift tether (figure 9).

Claim 10 rejected under 35 U.S.C. 102(b) as being anticipated by Berridge (US 6,131,702). Berridge discloses a platform lift apparatus (figure 1) comprising a frame (28, 30, 54) having internal and external mounting surfaces; a drive mechanism substantially disposed within said frame and coupled to said internal mounting surfaces (figure 2), said drive mechanism including a plurality of rotatable, parallel shafts (52) with each shaft further including at least one lift drum (42) having an associated lift tether (14) at least partially wound thereon and having an end hanging therefrom (figure 1); and a platform (16) coupled to each said lift tether end and being thereby suspended from said frame, said platform being selectively movable by operation of said drive mechanism in a vertical direction between raised and lowered positions (abstract); wherein said platform further comprises a seal (21) providing a barrier between said platform and said frame when said platform is at said raised position (col. 3, lines 20-24).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33, 42, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. alone as applied to claim 21 above and further in view of the MPEP 2144.04 IV A; *Changes in Size/Proportion*.

Regarding claims 33 and 44, although Smith et al. do not specifically claim a "braided" tether material, the lift tethers are disclosed as "cables" and Webster's II *New Riverside Dictionary* Revised Edition defines a cable as a "large-diameter fiber or steel rope". Therefore, a steel cable would be an obvious choice to one of ordinary skill in the art, when selecting a cable for hoisting a platform in a lift apparatus.

Regarding claim 42, although Smith et al. do not specifically disclose the frame to have adjustable dimensions, the MPEP 2144.04 IV A teaches that mere scaling up or down of an invention, capable of being scaled, does not establish patentability. And since merely scaling the invention of Smith et al. up, or down, would be an obvious variation to one of ordinary skill in the art, in order to provide a lift apparatus for a variety of different sized objects, it would have been obvious to build the lift apparatus of Smith et al. with adjustable dimensions.

Claims 25, 28 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. as applied to claim 21 above, and further in view of Swift (US 1,164,1443). Smith et al. fail to disclose extension idlers, releasable tether fasteners and vertically offset shafts.

However, regarding claim 25, Swift teaches a platform lift apparatus comprising extension idlers (60, 60', 60") in association with the lift drums (figure 9), shifting the horizontal position of the lift tether (59) and guiding the tether in a controlled manner to the a platform connection. Therefore, it would have been obvious to one of ordinary skill in the art to provide the platform lift apparatus of Smith et al. with extension idlers as taught by Swift, in order to further control the winding and unwinding of the lift tethers as the platform is raised and lowered.

Additionally, in an alternative embodiment, Swift teaches a releasable tether-to-platform fastener (14) coupling a tether (hanging from a lift drum) to a platform (figure 2) and vertically offset shafts (figure 1), providing an alternative arrangement of parts for raising and lowering a platform in relation to a horizontal surface. Therefore, it would have been obvious to one of ordinary skill in the art, to provide the platform lift apparatus of Smith et al. with the releasable fasteners and alternative arrangement of the shafts, as taught by Swift, in order to provide a removable platform and alternative arrangement for assembling the lift.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. as applied to claim 21 above, and further in view of Bishop et al. (5,535,852). Smith et al. fail to disclose the platform to have a plurality of vertical walls defining a basket.

However, Bishop et al. teach a platform lift apparatus comprising a platform (52), a frame (32, 36, 43a, 43b, 44, 45), and a drive mechanism disposed substantially within the frame (figure 2), wherein the platform comprises a plurality of vertical walls (figures 1 & 3) defining a basket, providing a platform capable of holding a variety of objects when raising and lowering the platform.

Therefore, it would have been obvious to one of ordinary skill in the art, to provide the platform lift apparatus of Smith et al. with a plurality of vertical walls, forming a basket, as taught by Bishop et al. in order to provide a lift apparatus adapted to hold a variety of items when raising and lowering the platform.

Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swift (US 1,164,143) alone. Swift discloses a platform lift apparatus comprising a frame (50) having internal and external mounting surfaces, said external mounting surface adapted to engage an opening in a horizontal surface (51); a drive mechanism substantially disposed within said frame and coupled to said internal mounting surfaces (figures 3 & 9), said drive mechanism including a plurality of rotatable, parallel shafts (61) with each shaft further including at least one lift drum (recessed winding area) having an associated lift tether (59) at least partially wound thereon and having an end hanging therefrom; and a platform (53) coupled to each said lift tether end and being

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thereby suspended from said frame, said platform being selectively movable by operation of said drive mechanism in a vertical direction between raised and lowered positions;

Regarding claim 9; in an alternative embodiment, Swift teaches a releasable tether-to-platform fastener (14) coupling a tether (hanging from a lift drum) to a platform (figure 2), providing a removable platform. Therefore, it would have been obvious to one of ordinary skill in the art to releasable attach all tethers to all platforms in the various embodiments of Swift in order to provide removable platforms.

Regarding claim 15, Swift additionally teaches an alternative embodiment wherein said plurality of parallel shafts further comprises two parallel shafts offset vertically with respect to each other (figure 1) as an alternate arrangement, said drive mechanism driving said parallel shafts to rotation in opposite rotational directions (figure 1). Therefore it would have been obvious to one of ordinary skill in the art to construct the rotatable shafts to be vertically offset from each other, as an alternative in the assembly of the lift apparatus, as taught by Swift, providing a lift platform apparatus capable of variation in assembly.

Claims 2, 3, 7, 14, 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes (5,667,035) in view of Bishop et al. (US 5,667,035).

Hughes discloses a platform lift apparatus (figure 1) comprising a frame (120, 128, 144, 146), having internal and external mounting surfaces, the external mounting surfaces being adapted to fixedly engage an opening provided in a horizontal

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supporting surface; a drive mechanism (motor 130) coupled to said mounting surfaces, said drive mechanism including a plurality of rotatable, parallel shafts (106, 108) with each shaft further including at least one grooved (figure 2) lift drum (140) having an associated lift tether (148), comprising a steel cable (col. 5, lines 24-26), a braided material, at least partially wound thereon and having an end hanging therefrom; and a platform (110) coupled to each said lift tether end and being thereby suspended from said frame, said platform being selectively movable by operation of said drive mechanism in a vertical direction between raised and lowered positions relative to the horizontal supporting surface (abstract), wherein the shafts are driven to rotation in a like direction, both rotating away from the opening, and wherein the frame has adjustable dimensions (col. 4, lines 65-67). Hughes fails to teach the drive mechanism mounted substantially on the internal surface of the frame and a platform basket.

However, Bishop et al. teach a platform lift apparatus comprising a rectangular (figure 2) frame (32, 36, 43a, 43b, 44, 45) having internal and external mounting surfaces, a drive mechanism substantially within the internal surface of the frame (figure 2) and a platform (52) comprising a horizontal base and a plurality of vertical walls defining a basket (figure 1), providing a platform capable of carrying a variety of objects.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the platform lift apparatus of Hughes with the basket of and drive mechanism mounting structure of Bishop et al. in order to provide a platform capable of carrying a variety of objects and mounting structure that takes up less floor space.

Allowable Subject Matter

Claims 5, 8, 27, 29-32 and 36-40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of their respective base claims and any intervening claims.

Claims 11-13 and 17-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The examiner recognizes that previously some subject matter had been indicated as allowable and that currently all claims are rejected in some form. However, in reviewing the applicant's claims and the prior art relevant to the applicant's invention, such indefiniteness in the applicant's claims and anticipation by prior art could not be ignored, prompting the current Office action in response to the amendments filed August 24th, 2007.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Matsuda (US 4,650,036), Harnischfeger (US 1,938,658), Brunkhorst (US 524,344), Light (US 2,242,892), Medenwald (US Re.22,069), and Ehrenleitner (US 6,991,064) all teach various key features of the applicant's invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ
9/14/07



BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER